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SUPREME COURT OF THE UNITED STATES

No. 4.—October Term, 1970

John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Apellants, *v.* Lawrence Landry et al.	On Appeal From the United States District Court of the Northern District of Illinois.

[February 23, 1971]

Mr. Justice Black delivered the opinion of the Court.

This action was brought in federal court by seven groups of Negro residents of Chicago, Illinois, seeking a declaratory judgment and an injunction against the enforcement of a number of Illinois statutes and Chicago ordinances on the grounds that they violated various provisions of the Federal Constitution. The complaint named as defendants and sought relief against a number of officials of Cook County and the City of Chicago: the Mayor, the Chief Judge, and two Magistrates of the Circuit Court, the State's Attorney for the county, the Sheriff, the Superintendent of Police, the city's Corporation Counsel and his assistant, and three city police officers. Their complaint challenged as invalid the Illinois statutes prohibiting mob action,[1] resisting arrest,[2] aggravated assault,[3] aggravated battery,[4] and intimidation.[5] They alleged that some of the plaintiffs had been arrested under some of these statutes and that those prosecutions were currently pending in Illinois state

[1] Ill. Rev. Stat., c. 38, § 25–1.
[2] Ill. Rev. Stat., c. 38, § 31–1.
[3] Ill. Rev. Stat., c. 38, § 12–2.
[4] Ill. Rev. Stat., c. 38, § 12–4.
[5] Ill. Rev. Stat., c. 38, § 12–6.

courts, and that Negroes were being intimidated in the exercise of their First Amendment rights (1) through the wholesale use of all the statutes alleged to be unconstitutional to prosecute members of the Negro community and (2) through the use of arrests without probable cause, coupled with the setting of exorbitant bail. The complaint contended that the defendants had threatened to enforce all of the named statutes for the sole purpose of harassing and intimidating the plaintiffs. They requested the convening of a three-judge federal court under 28 U. S. C. §§ 2281 and 2284, a declaration that the challenged statutes were unconstitutional, and temporary and permanent injunctions prohibiting the pending and any possible future prosecutions under the statutes in question.

The defendants answered by opposing the convening of a three-judge court and the issuance of a temporary injunction, and moved to dismiss the complaint on the grounds, among others, that (1) as to those plaintiffs against whom prosecutions were then pending, there was an adequate remedy at law in that they would be able to present their constitutional challenges to the statutes involved in the pending criminal proceedings, and that as to such plaintiffs the court was barred by 28 U. S. C. § 2283 from issuing an injunction against state court proceedings,[*] and that (2) as to those plaintiffs without matters pending in the state courts, there were no facts alleged in the complaint showing that any of those plaintiffs were threatened with prosecution under any of the challenged statutes, or that they would suffer any irrep-

[*] 28 U. S. C. § 2283 provides that:
"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

arable injury if they were required to defend any prosecution that might be brought against them in state court.

The single federal district judge denied the defendants' motion to dismiss and convened the three-judge court.[7] The three-judge court upheld all of the challenged statutes except for one subsection of the mob action statute which prohibited "The assembly of 2 or more persons to do an unlawful act . . . ,"[8] and one subsection of the intimidation statute which prohibited intimidating a person by threats to "Commit any criminal offense. . . ."[9] These last two subsections were declared invalid on the grounds that they were overly broad and might sweep within their scope conduct that could not constitutionally be made criminal. The court decreed that the defendants—city and county officials—"be and they are hereby perpetually enjoined and restrained from the enforcement of or the prosecution under" the two statutory subsections it declared unconstitutional. The defendant officials did not appeal the three-judge court's declaration and injunction invalidating the challenged subsection of the mob action statute

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[7] The District Judge found that the challenges to various city ordinances were not appropriate for determination by a three-judge court and these claims were not certified to the three-judge court. In addition, the plaintiffs abandoned their challenge to the constitutionality of the Illinois aggravated assault and aggravated battery statutes.

[8] Ill. Rev. Stat., c. 38, § 25–1, provides that:

"(a) Mob action consists of any of the following:

. . . . .

"(2) The assembly of 2 or more persons to do an unlawful act . . . ."

[9] Ill. Rev. Stat., c. 38, § 12–6, provides that:

"(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

"(3) Commit any criminal offense . . . ."

and that holding is therefore not before us. We have before us only the court's declaration of the unconstitutionality and injunction against the enforcement of one subsection of the intimidation statute.

It is obvious that the allegations of the complaint in this case fall far short of showing any irreparable injury from threats or actual prosecutions under the intimidation statute or from any other conduct by state or city officials. Not a single one of the citizens who brought this action had ever been prosecuted, charged, or even arrested under the particular intimidation statute which the court below held unconstitutional. All the charges of the complaint deal broadly and generally with all the state statutes and city ordinances that the appellees originally challenged. In fact, the complaint contains no mention of any specific threat by any officer or official of Chicago, Cook County, or the State of Illinois to arrest or prosecute any one or more of the plaintiffs under that statute either one time or many times. Rather, it appears from the allegations that those who originally brought this suit made a search of state statutes and city ordinances with a view to picking out certain ones that they thought might possibly be used by the authorities as devices for bad-faith prosecutions against them. There is nothing contained in the allegations of the complaint from which one could infer that any one or more of the citizens who brought this suit is in any jeopardy of suffering irreparable damages if the State is left free to prosecute under the intimidation statute in the normal manner. As our holdings today in *Younger* v. *Harris, ante,* and *Samuels* v. *Mackell, ante,* show, the normal course of state criminal prosecutions cannot be disrupted or blocked on the basis of charges which in the last analysis amount to nothing more than speculation about the future. The policy of a

century and a half against interference by the federal courts with state law enforcement is not to be set aside on such flimsy allegations as those relied upon here.

For the reasons set out above and for those set out at greater length today in *Younger* and *Samuels*, we reverse.

Reversed and remanded.

MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL concur in the result.

For opinion of MR. JUSTICE STEWART concurring in this case see No. 2.

SUPREME COURT OF THE UNITED STATES

Nos. 2 AND 4.—OCTOBER TERM, 1970

Evelle J. Younger, Appellant, v. John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.
John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Appellants, v. Lawrence Landry et al.	On Appeal From the United States District Court for the Northern District of Illinois.

[February 23, 1971]

MR. JUSTICE DOUGLAS, dissenting.

The fact that we are in a period of history when enormous extrajudicial sanctions are imposed on those who assert their First Amendment rights in unpopular causes emphasizes the wisdom of *Dombrowski* v. *Pfister*, 380 U. S. 479. There we recognized that in times of repression, when interests with powerful spokesmen generate symbolic pogroms against nonconformists, the federal judiciary, charged by Congress with special vigilance for protection of civil rights, has special responsibilities to prevent an erosion of the individual's constitutional rights.

Dombrowski represents an exception to the general rule that federal courts should not interfere with state criminal prosecutions. The exception does not arise merely because prosecutions are threatened to which the First Amendment will be the profferred defense. *Dombrowski* governs statutes which are a blunderbuss by themselves or when used *en masse*—those that have an

"overbroad" sweep. "If the rule were otherwise, the contours of regulation would have to be hammered out case by case—and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation." *Id.*, at 487. It was in the context of overbroad state statutes that we spoke of the "chilling effect upon the exercise of First Amendment rights" caused by state prosecutions. *Ibid.*

As respects overbroad statutes we said at least as early as 1940 that when dealing with First Amendment rights we would insist on statutes "narrowly drawn to prevent the supposed evil." *Cantwell* v. *Connecticut*, 310 U. S. 296, 307.

The special circumstances when federal intervention in a state criminal proceeding is permissible are not restricted to bad faith on the part of state officials or the threat of multiple prosecutions. They also exist where for any reason the state statute being enforced is unconstitutional on its face. As Mr. Justice Butler, writing for the Court, said in *Terrace* v. *Thompson*, 263 U. S. 197, 214:

> "Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

Our *Dombrowski* decision was only another facet of the same problem.

In *Younger,* "criminal syndicalism" is defined so broadly as to jeopardize "teaching" that socialism is preferable to free enterprise.

Harris' "crime" was distributing leaflets advocating change in industrial ownership through political action. The statute under which he was indicted was the one involved in *Whitney* v. *California,* 274 U. S. 357, a decision we overruled in *Brandenburg* v. *Ohio,* 395 U. S. 444, 449.[1]

If the "advocacy" which Harris used was an attempt at persuasion through the use of bullets, bombs, and arson, we would have a different case. But Harris is charged only with distributing leaflets advocating political action toward his objective. He tried unsuccessfully to have the state court dismiss the indictment on constitutional grounds. He resorted to the state appellate court for writs of prohibition to prevent the trial, but to no avail. He went to the federal court as a matter of last resort in an effort to keep this unconstitutional trial from being saddled on him.

The "anti-injunction" statute, 28 U. S. C. § 2283,[2] is not a bar to a federal injunction under these circumstances. That statute was adopted in 1793, 1 Stat. 335,[3]

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[1] See Linde, Clear and Present Danger Re-examined, 22 Stan. L. Rev. 1163 (1970).

[2] "A court of the United States may not grant an injunction to stay proceedings in a State court *except as expressly authorized by Act of Congress,* or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (Italics added.)

[3] In its initial form the "anti-injunction" Act provided "nor shall a writ of injunction be granted [by any court of the United States] to stay any proceedings in state court." There were no exceptions. In 1875 it was subsequently modified by an insertion of the Revisors to read: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State,

and reflected the early view of the proper role of the federal courts within American federalism.

Whatever the balance of the pressures of localism and nationalism prior to the Civil War, they were fundamentally altered by the war. The Civil War Amendments made civil rights a national concern. Those Amendments, especially § 5 of the Fourteenth Amendment, cemented the change in American federalism brought on by the war. Congress immediately commenced to use its new powers to pass legislation. Just as the first judiciary Act, 1 Stat. 73, and the "anti-injunction" statute represented the early views of American federalism, the Reconstruction statutes, including the enlargement of federal jurisdiction,[4] represent a later view of American federalism.

One of the jurisdiction-enlarging statutes passed during Reconstruction was the Act of April 20, 1871. 17

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except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." R. S. § 720.

In *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 133–134, in discussing the statutory exceptions to the "anti-injunction" Act we noted that, while only bankruptcy was the explicit exception, there were others. (1) The "Removal Acts qualify *pro tanto* the Act of 1793." (2) The Act of 1853 limiting shipowners' liability "[b]eing a 'subsequent statute' to the Act of 1793, . . . [it] operates as an implied legislative amendment to it." We also added (3) the Interpleader Act of 1926 and (4) the Frazier-Lemke Act. *Toucey* limited a line of cases dealing with nonstatutory exceptions to the "anti-injunction" Act. Shortly thereafter the current language of § 2283 was written into the Judicial Code. The Revisor's Note states "the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision." Both pre-*Toucey* and post-*Toucey* decisions recognize implied legislative exceptions to the "anti-injunction" Act. See *Porter* v. *Dicken*, 328 U. S. 252; *Leiter Minerals* v. *United States*, 352 U. S. 220.

[4] What is now 28 U. S. C. § 1343 (3) was added in 1871, 17 Stat. 13, and the federal question jurisdiction of 28 U. S. C. § 1331 was added in 1875. 18 Stat. 470.

Stat. 13. Beyond its jurisdictional provision that statute, now codified as 42 U. S. C. § 1893 provides:

> "Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof *to the deprivation of any rights, privileges, or immunities secured by the Constitution* and laws, shall be liable to the party injured in an action at law, *suit in equity*, or other proper proceeding for redress." (Emphasis added.)

A state law enforcement officer is someone acting under "color of law" even though he may be misusing his authority. *Monroe* v. *Pape*, 365 U. S. 167. And prosecution under a patently unconstitutional statute is a "deprivation of . . . rights, privileges, or immunities secured by the Constitutions. "Suits in equity" obviously includes injunctions.[5]

I hold that § 1983 is included in the "expressly authorized" exception to § 2283,[6] a point not raised or considered in the much discussed *Douglas* v. *Jeanette*, 319 U. S. 157. There is no more good reason for allowing a general statute dealing with federalism passed at the end of the 18th century to control another statute also dealing with federalism, passed almost 80 years later, than to conclude that the early concepts of federalism were not changed by the Civil War.

That was the view of Judge Will in the *Boyle* case, 288 F. Supp. 200, 223. In speaking of the Civil War

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[5] We have already held that § 1983 requires no exhaustion of state remedies. *McNeese* v. *Board of Education*, 373 U. S. 668.

[6] In accord with my view are *Honey* v. *Goodman*, 432 F. 2d 333 (CA6), and *Cooper* v. *Hutchinson*, 184 F. 2d 119 (CA3). Opposed are *Gross* v. *Illinois*, 312 F. 2d 257 (CA7), and *Baines* v. *Danville*, 337 F. 2d 579 (CA4).

And see Maraist, Federal Injunctive Relief Against State Court Proceedings, 48 Tex. L. Rev. 535, 591, *et seq.* (1970).

Amendments as "a constitutional revolution in the nature of American federalism" he said:

> "This revolution, in turn, represents a historical judgment. It emphasizes the overwhelming concern of the Reconstruction Congresses for the protection of the newly won rights of freedmen. By interposing the federal government between the states and their inhabitants, these Congresses sought to avoid the risk of nullification of these rights by the states. With the subsequent passage of the Act of 1871, Congress sought to implement this plan by expanding the federal judicial power. Section 1983 is, therefore, not only an expression of the importance of protecting federal rights from infringement by the states but also, where necessary, the desire to place the national government between the state and its citizens." *Ibid.*

In *Boyle* the statute makes "intimidation" to "commit any criminal offense" an offense. The three-judge court said:

> "It . . . makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct, threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection, and threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures. Indeed, the phrase 'commit any criminal offense' is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth." 280 F. Supp. 938, 964.

Landry brought a class action challenging the constitutional validity of five sections of the Illinois statutes. They alleged arrests under all but two of the challenged sections. Just before trial they abandoned their challenge of two of the five sections. The District Court held one of the remaining sections constitutional and the "mob action" and "intimidation" sections unconstitutional. Appellants have not appealed the determination that the "mob action" section of the Illinois statutes is unconstitutional.

The Court dismisses this case because there is no showing of irreparable injury on what it describes as "flimsy allegations." *Ante*, at 5. The Court states: "There is nothing contained in the allegations of the complaint from which one could infer that any one or more of the citizens who brought this suit is in any jeopardy of suffering irreparable damages if the State is left free to prosecute under the intimidation statute in the normal manner." *Ante*, at 4. Landry and his associates, however, allege that appellants were using the intimidation section along with several other sections to harrass them, not to prosecute them in the normal manner. They allege that appellants are arresting them without warrants or probable cause, and detaining them on excessive bail. They allege that the arrests are made during peaceful demonstrations and without any expectation of securing valid convictions. In sum, Landry and his group allege that the "intimidation" section is one of several statutes which appellants are using *en masse* as part of a plan to harass them and discourage their exercise of their First Amendment rights. There is thus a lively and existing case or controversy concerning First Amendment rights. And I believe that the federal court acted in our finest tradition when it issued the stay.

As the standards of certainty in statutes containing criminal sanctions are higher than those in statutes containing civil sanctions, so are the standards of certainty touching on freedom of expression higher than those in other areas. *Winters* v. *New York*, 333 U. S. 507, 517–518. "There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertanty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt."

Where freedom of expression is at stake these requirements must be more sedulously enforced.

In *Younger* there is a prosecution under an unconstitutional statute and relief is denied. In *Boyle* there is harassment but as yet no prosecution. Allegations of a prosecution or harassment under facially unconstitutional statutes should be sufficient for the exercise of federal equity powers.

Dombrowski and 42 U. S. C. § 1893 indicate why in *Boyle* federal intervention against enforcement of the state laws is appropriate. The case of *Younger* is even stronger. There the state statute challenged is the prototype of the one we held unconstitutional in *Brandenburg* v. *Ohio, supra.*

The eternal temptation, of course, has been to arrest the speaker rather than to correct the conditions about which he complains. I see no reason why these petitioners should be made to walk the treacherous ground of these statutes. They, like other citizens, need the umbrella of the First Amendment as they study, analyze, discuss, and debate the troubles of these days. When criminal prosecutions can be leveled against them because they express unpopular views, the society of the dialogue is in danger.